

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION**

PERSONAL AUDIO, LLC,

Plaintiff,

v.

ACER AMERICA CORP.,  
APOLLO BRANDS,  
BARNES & NOBLE INC.,  
FUJITSU AMERICA INC.,  
LENOVO (UNITED STATES) INC.,  
TOSHIBA CORPORATION,  
TOSHIBA AMERICA INFORMATION  
SYSTEMS, INC., and  
ZTE (USA) INC.,

Defendants.

CASE NO. 1:14-CV-8-RC

JURY TRIAL DEMANDED

PERSONAL AUDIO, LLC,

Plaintiff,

v.

FUHU, INC.,

Defendant.

Civil Action No. 1:13-cv-00513-RC

JURY TRIAL DEMANDED

**JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT**

Pursuant to P.R. 4-3, and the Court's order, *see* ECF No. 181 in Case No. 1:14-CV-8-RC, Plaintiff Personal Audio, LLC ("Plaintiff") and Defendants Acer America Corp., Apollo Brands, Barnes & Noble Inc., Fujitsu America Inc., Lenovo (United States) Inc., Toshiba Corporation, Toshiba America Information Systems, Inc., ZTE (USA) Inc., and Fuhu, Inc. (collectively "Defendants") submit this Joint Claim Construction and Prehearing Statement for the

above-captioned cases.

### **I. Agreed Terms**

The parties agree on the proposed constructions for the following terms as set forth in Exhibit A:<sup>1</sup>

<b>Claim</b>	<b>Term</b>
claim 14 of the '076 patent (governed by 35 U.S.C. § 112 ¶ 6)	“output means for producing audio sounds in response to analog audio signals”
claims 1, 13, 14 of the '076 patent (governed by 35 U.S.C. § 112 ¶ 6)	“means for accepting control commands from a user of said player” / “input means for accepting control commands from a user”
claim 14 of the '076 patent (governed by 35 U.S.C. § 112 ¶ 6)	“processing means for translating said digitally recorded audio program segments into analog audio signals delivered to said output means for reproducing said recorded program segments in a form audible to said user”

### **II. Proposed Constructions; Intrinsic and Extrinsic Evidence**

Exhibit A sets forth the proposed constructions with intrinsic and extrinsic evidence identified by Plaintiff and by Defendants in the above-referenced cases for U.S. Patent No. 6,199,076 (“’076 patent”) and U.S. Patent No. 7,509,178 (“’178 patent”). The parties reserve their respective rights to rely on the citations identified by the other side, including any citations identified in another party’s briefing. The parties also reserve their respective rights to identify additional extrinsic evidence for rebuttal purposes.

### **III. Estimated Hearing Length**

All parties request a total of 4 hours (2 hours per side) for the claim construction hearing.

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<sup>1</sup> While Defendants have agreed to some constructions previously adopted by this Court in *Personal Audio, LLC v. Apple, Inc.* and have proposed similar constructions for some other terms, Defendants do not concede that they are bound in any way by claim constructions in prior litigation to which they were not a party or that the prior construction in any way alters the burden of proof on claim construction.

#### **IV. Technology Tutorial**

- a. **Plaintiff's Position:** Plaintiff requests that the Court allow it to present a brief technology tutorial.
- b. **Defendants' Position:** According to the Court's Order of October 27, 2014, ECF No. 136 at 2, the tutorial is a technology synopsis to be submitted in hard copy and disk, as opposed to a presentation. Further, Defendants do not believe a technical tutorial is necessary given the Court's experience with the patents-in-suit but will submit a tutorial if Plaintiff decides to provide another technical tutorial for the Court.

#### **V. Witnesses**

The parties do not propose to call any witness, including experts, at the claim construction hearing but may have experts present if the Court requests their presence to answer any technical questions that the Court may have.

#### **VI. Proposed Length of Briefs**

- a. **Plaintiff's Position:** Plaintiff requests 40 pages for its opening claim construction brief and 25 pages for its reply brief. Plaintiff does not object to Defendant having a total of 65 pages for their responsive claim construction brief.
- b. **Defendants' Position:** Defendants respectfully request that the Court grant at least the total of the combined page limit granted to Plaintiff for its opening and reply briefs for Defendants' intervening responsive claim construction brief. For example, whether Plaintiff is granted 40 pages for its opening brief and 10 pages for its reply brief or 30 pages for its opening brief and 20 pages

for its reply brief, Defendants would be granted 50 pages total for their responsive claim construction brief. As such, if Plaintiff's requested page limits are granted, Defendants would be granted 65 pages total for their responsive claim construction brief.

Dated: February 13, 2015

Respectfully submitted,

By: /s/ John Saba

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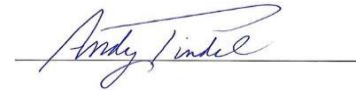
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A handwritten signature in blue ink, reading "Andy Tindel", is positioned above a horizontal line.

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**CERTIFICATE OF SERVICE**

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served on February 13, 2015 with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ John Saba

John D. Saba, Jr.